

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

LARRY ANTHONY WHITEHURST,)	
)	
)	
Plaintiff,)	
)	
vs.)	Case No. 2:09-CV-168-DAS
)	
MICHAEL J. ASTRUE,)	
COMMISSIONER OF)	
SOCIAL SECURITY,)	
)	
Defendant.)	

ORDER OF REVERSAL AND REMAND

On unopposed motion of Michael J. Astrue (# 20), Commissioner of the Social Security Administration, and pursuant to the power of this Court to enter a judgment affirming, modifying, or reversing the Commissioner's decision with remand in Social Security actions under sentence four of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), this Court hereby reverses the Commissioner's decision and remands the Plaintiff's claim for further development of the record and the issuance of a new decision.

The ALJ did not take sufficient action on the claimant's request that he be permitted to subpoena a consultative physician, John Frenz, M.D. (Tr. 19, 192, 329-30, 359). In the Fifth Circuit, the claimant has an absolute right of subpoena. See Lidy v. Sullivan, 911 F.2d 1075 (5th Cir. 1990). Under Lidy, the ALJ must issue a requested subpoena: "when a claimant requests, prior to the closing of the record, that a subpoena be

issued for the purpose of cross-examining an examining physician, the adjudicator must issue the subpoena." (emphasis in original). Acquiescence Ruling 91-1(5).

On remand, the Appeals Council will remand the case to an ALJ and provide a supplemental hearing for the purpose of allowing the claimant's representative to cross examine Dr. Frenz.

The Clerk of the Court will enter a separate judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

SO ORDERED this the 24th day of May, 2010.

/s/ David A. Sanders

UNITED STATES MAGISTRATE JUDGE